

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-207898.4**DATE:** May 17, 1983**MATTER OF:** Ensign Aircraft Company**DIGEST:**

Request for reconsideration is denied where protester presents no new information or error of law not fully considered in reaching prior decision.

Ensign Aircraft Company requests reconsideration of our decision Ensign Aircraft Company, B-207898.3, April 1, 1983, 83-1 CPD _____, in which we dismissed as untimely Ensign's protest concerning the Air Force's procurement of a Next Generation Trainer (NGT) under Request for Proposals (RFP) No. F33657-81-R-0395.

We deny Ensign's request for reconsideration because it presents no facts which were not previously considered or errors of law in the original decision. 4 C.F.R. § 21.9.(a) (1983).

In dismissing Ensign's protest we relied principally on § 21.2(b)(2) of our Bid Protest Procedures (4 C.F.R. § 21.2(b)(2)) which provides that protests must be filed within 10 working days after the basis for protest is known or should have been known. The protest, which largely concerned Ensign's elimination from the competitive range and alleged deficiencies in the successful offeror's design, was not filed with our Office until August 25, 1982, even though the Air Force had informed Ensign in March of its elimination and Ensign knew of most of the alleged design defects by May.

In requesting reconsideration, Ensign maintains that its protest was timely because it initiated the protest on the basis of information furnished at a debriefing conducted by the Air Force on August 11, 1982. The time to protest should run from that date, Ensign argues, because:

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"There was no prior official detailed explanation or information available to Ensign regarding why its proposal was declared 'outside the competitive range'."

The significance of Ensign's debriefing was fully considered in reaching our prior decision. As we stated in the decision:

"It is obvious from Ensign's correspondence with the Air Force subsequent to the rejection of its proposal, however, that Ensign did not receive new information concerning the deficiencies alleged in its proposal during the debriefing. Ensign was well informed as to those portions of its proposal that the Air Force found to be deficient, and why, months before the debriefing."

We also pointed out that Ensign knew of most of the alleged defects in the awardee's proposal by May and of all of them by mid-July.

In the remainder of Ensign's request for reconsideration, it restates its arguments concerning its view that we should consider its protest under the significant issue or good cause exceptions in 4 C.F.R. § 21.2(c). Ensign views its protest as significant because it believes its protest is meritorious and because it believes the Government will save money by contracting for its version of the NGT, which it believes will have better operating characteristics than the aircraft selected. Ensign further contends that it had good cause for delaying its protest because the Air Force informed it that a debriefing would be conducted only after a contract was awarded.

We considered and rejected Ensign's contentions that the case should be considered under the significant issue or good cause exceptions in our prior decision. Whether we consider a case under one of these exceptions is a matter of discretion by our Office, which is invoked sparingly. As we pointed out in our prior decision, we do not invoke the significant issue exception unless we find that the protest presents an issue significant to procurement practice or procedure because of its widespread interest to

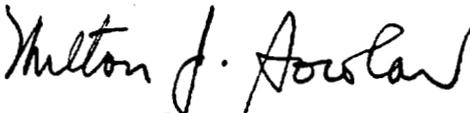
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the procurement community. The exception is not invoked where, as here, the legal issues involved have been considered previously by our Office in numerous cases.

We also pointed out in our decision that the good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the timely filing of the protest. The Air Force's action in postponing Ensign's debriefing did not prevent Ensign from filing its protest earlier.

Finally, Ensign contends in an attachment to its request for reconsideration that the Air Force should have structured its RFP so that there would have been a fly-off between alternate designs. This apparently new basis of protest concerns the procurement method used and it too is untimely because the procurement method to be used was clearly established in the RFP and Ensign did not protest prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(b)(1).

Ensign's request for reconsideration is denied.

for 
Comptroller General
of the United States